



WESTFIELD-WASHINGTON TOWNSHIP  
BOARD OF ZONING APPEALS

September 12, 2023

2308-VU-09

Exhibit 1

**Petition Number:** 2308-VU-09

**Subject Site Address:** 17502 Shady Nook Rd. (The "Property")

**Petitioner:** Lana Nichols (The "Petitioner")

**Request:** The Petitioner requests a Variance of Use to permit a by-appointment only Low-Intensity Retail (beauty salon) use on 0.65 acres +/- in the GO: General Office District.

**Current Zoning:** GO: General Office District

**Current Land Use:** General Services / Professional Office

**Approximate Acreage:** 0.65 acres+/-

**Exhibits:**

1. Staff Report
2. Location Map
3. Application

**Staff Reviewer:** Weston Rogers, Associate Planner

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### **OVERVIEW**

Location: The subject property is 0.65 acres +/- in size and is located at 17502 Shady Nook Rd. (see **Exhibit 2**). The Property is currently zoned the GO: General Office District and is also located within the US Highway 32 Overlay District. Surrounding properties are zoned the GO: General Office Districts.

Property History: The Property was developed in the early 1960's presumably as a Single-family Detached Dwelling. With the establishment of The Westfield-Washington Township Comprehensive Zoning Ordinance of 1977 the zoning classification of this land transitioned to be GO: General Office. Over time, a variety of office uses have been conducted within the existing building located on the Property.

Variance Request: The Petitioner requests a Variance of Use to permit a by-appointment only Low-Intensity Retail (beauty salon) use on 0.65 acres +/- in the GO: General Office District. (Article 13.2).

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### **SUMMARY OF VARIANCE**

The Petitioner is requesting this Variance of Use to allow a by-appointment only Low-Intensity Retail use, specifically a beauty salon, to occupy the existing building on the Property.

A beauty salon is considered a Low-Intensity Retail use (as defined by the UDO). A Low-Intensity Retail use is not a permitted use within the current Zoning District of the Property (GO: General Office).

Moreover, a Variance of Use is needed to permit the proposed beauty salon to operate on The Property.

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### **COMPREHENSIVE PLAN**

The Future Land Use Plan in the Westfield-Washington Township Comprehensive Plan (the "Comprehensive Plan") identifies the properties as "Local Commercial". A link to the Comprehensive Plan "Local Commercial" section can be found [here](#).



The Comprehensive Plan identifies appropriate land uses in this land use classification to include: i) community and local retail, ii) office, iii) services, iv) institutional uses, and v) attached residential dwellings. The Comprehensive Plan is not law; rather, it is intended to serve as a guide in making land use decisions.

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## **PROCEDURAL**

**Public Notice:** The Board of Zoning Appeals is required to hold a public hearing on its consideration of a Variance of Standard. This petition is scheduled to receive its public hearing at the September 12, 2023, Board of Zoning Appeals meeting. Notice of the public hearing was properly advertised in accordance with Indiana law and the Board of Zoning Appeals' Rules of Procedure.

**Conditions:** The UDO<sup>1</sup> and Indiana law provide that the Board of Zoning Appeals may impose reasonable conditions and limitations concerning use, construction, character, location, landscaping, screening, and other matters relating to the purposes and objectives of the UDO upon any Lot benefited by a variance as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the subject Lot or upon public facilities and services. Such conditions shall be expressly set forth in the order granting the variance.

**Acknowledgement of Variance:** If the Board of Zoning Appeals approves this petition, then the UDO<sup>2</sup> requires that the approval of the variance shall be memorialized in an acknowledgement of variance instrument prepared by the Department. The acknowledgement shall: (i) specify the granted variance and any commitments made or conditions imposed in granting of the variance; (ii) be signed by the Director, Property Owner and Applicant (if Applicant is different than Property Owner); and (iii) be recorded against the subject property in the Office of the Recorder of Hamilton County, Indiana. A copy of the recorded acknowledgement shall be provided to the Department prior to the issuance of any subsequent permit or commencement of uses pursuant to the granted variance.

**Variances of Use:** The Board of Zoning Appeals shall approve or deny variances from the terms of the UDO. A variance may be approved under Indiana Code § 36-7-4-918.4 only upon a determination in writing that:

- 1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- 2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- 3) The need for the variance arises from some condition peculiar to the property involved;
- 4) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property; and
- 5) The approval does not interfere substantially with the Comprehensive Plan.

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<sup>1</sup> Article 10.14(I) Processes and Permits; Variances; Conditions of the UDO.

<sup>6</sup> Article 10.14(K) Processes and Permits; Variances; Acknowledgement of Variance of the UDO.



**DEPARTMENT COMMENTS**

**Approval:** If the Board is inclined to approve the variance, then the Department recommends the conditions and findings as set forth below:

**Recommended Conditions of Approval:**

1. That the Petitioner shall record an acknowledgement of this approval with the Hamilton County Recorder's Office and return a copy of the recorded instrument to the Community Development Department;
2. That the existing building on site shall remain residential in character;
3. That the beauty salon shall conduct business "by appointment only";
4. That the beauty salon shall be limited to the following hours of operation:
  - Monday – closed
  - Tuesday, Wednesday, Thursday – 10am to 7pm
  - Friday – 8am to 4pm
  - Saturday – 8am to 4pm
  - Sunday – closed

**Recommended Findings for Approval:**

- 1) *The approval will not be injurious to the public health, safety, morals, and general welfare of the community:*

**Finding:** It is unlikely that allowing a Low Intensity Retail Use to locate on the Property will be injurious to the public health, safety, morals, and general welfare of the community because the use will be contained within the existing building on the Property, and the request is consistent with the uses contemplated in the City's Comprehensive Plan.

- 2) *The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:*

**Finding:** It is unlikely the use and value of adjacent property will be affected in a substantially adverse manner as the Property will remain residential in character and the use will be contained within the existing building on the Property during specified hours of operation.

- 3) *The need for the variance of use arises from some condition peculiar to the property involved.*

**Finding:** A beauty salon is considered a Low-Intensity Retail Use which is not permitted within the GO: General Office zoning district. However, the Comprehensive plan contemplates service uses as an appropriate land use on the Property.

- 4) *The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the subject property:*

**Finding:** The strict application of the terms of the zoning ordinance will result in the inability for the Petitioner to utilize the Property for the intended business purpose.



5) *The approval does not interfere substantially with the comprehensive plan:*

**Finding:** The Westfield-Washington Comprehensive Plan (the "Comprehensive Plan") includes this property in the area designated as "Local Commercial", this proposed use meets this classification.

**Denial:** If the Board is inclined to deny the requested variance, then the Department recommends denying the variance, and then tabling the adoption of findings until the Board's next meeting with direction to the Department to prepare the findings pursuant to the public hearing evidence and Board discussion.